

**CONSERVATION COMMISSION  
AGENDA  
JULY 18, 2007**

(001) 7:00 Violation – 70 Newtown Road - Steven Kelley 85-723  
Enforcement Order

Preliminary Review – 8 Puritan Road (renovate deck to 4-season)

(010, 011) 7:15 Continuation – NOI - 149 Central Street – Infant Toddlers Children Center  
Amended plan and supplemental letter submitted 7/11/2007

(020, 021) 7:30 Request for Determination - 124 High Street – Richard Rippere  
ABC Cesspool - replacement of an existing sewage disposal system.

(030, 031) 7:45 Request for Determination - 38 Washington Drive - Shui Xu  
Sep-Tech Services/AJP Contracting - replacement of an existing sewage disposal system.

(040, 041) 8:00 Notice of Intent - 154 Prospect Street – Aaron Jeanson  
Acton Survey & Engineering - demolition of an existing home and the proposed construction  
of a single family home.

(050, 051,  
052, 053,  
054, 055) 8:15 Continuation – NOI – Spring Hill Road  
Amended plan and supplemental letter received 6/28/2007.

Certificates of Compliance

(060) – 132 Prospect Street – pool - 85-932 – no conditions in perpetuity  
(061) – Powdermill Plaza – sewer connection - 85-925 – no conditions in perpetuity

Minutes

June 6            comments rec'd by JA  
June 20           forthcoming

**CONSERVATION COMMISSION  
MINUTES  
JULY 18, 2007**

**MEMBERS PRESENT:** Terry Maitland, Janet Adachi, Frances Portante, William Froberg, Linda Serafini

**ADMINISTRATOR:** Tom Tidman

**RECORDING SECRETARY:** Andrea Ristine

**VISITORS:** Steven & Rachel Kelley, Mark Donohoe, Susan Twombly, Dick Dolan, Tom Campbell, Sean Towey, Kim & Jack Appelmans, Bob Callahan, Terry O'Sullivan, Dara Mitchell, Rebecca Harvey, Cynthia Harvey, John Harvey, Elaine and William Sisler, David Hardt, Susan Mitchell-Hardt, Di McQueen, Jill Callahan, Sandra Roschelle, Di McQueen

7:15 Preliminary Review – 8 Puritan Road (renovate deck to four-season)

John Marchese presented sketch plans for a proposed addition and renovations that would involve removing the existing three-season porch and replacing it with a full foundation addition on to the kitchen. The addition would be in greater non-compliance than the existing porch. The Commission felt that the proposed addition would not meet the intent of the Bylaw for pre-existing non-compliant structures and asked the builder to reconsider the design.

7:21 Mr. Maitland called the meeting to order.

7:00 Violation – 70 Newtown Road - Steven & Rachel Kelley 85-723 (001)

Mr. Maitland noted to the Kelleys that they have a difficult situation in that there is a deed restriction on their property originating from conditions in perpetuity in the Order of Conditions relating to the construction of the house and driveway. One of the special conditions in perpetuity was that the driveway must remain as gravel where noted on the approved plan. Recently the driveway was paved where it was to remain gravel; aside from violating this condition the activity was within the buffer zone and there was no attempt to properly file with the Commission.

Mr. Kelley stated that a portion of the driveway was already paved and he was not aware that he was not allowed to pave the remainder or that he was within the Commission's jurisdiction. Mr. Kelley stated that he felt that there was a safety issue during winter conditions. He stated that his car slid into Newtown Road one time and he has had visitors drive down the embankment of the driveway due to the angle.

Mr. Maitland stated that the driveway is within the Commission's jurisdiction and such activities, by law, are subject to the Commission's review.

Mr. & Mrs. Kelley stated that they were not aware of the restrictions.

Ms. Adachi stated that the seller had omitted the restrictive language from the Kelleys' deed. But at the time of the transfer to the Kelleys the seller's rights in the property were subject to the restrictive conditions, so as a matter of law the title that the Kelleys received still was and is subject to the conditions.

Mr. Maitland noted that the Commission may issue an enforcement order to obligate the removal of the pavement in the described location; the effect of the omission of the restricting conditions is in the owner's liability and obligation.

Upon query by Mr. Kelley, the Commission suggested that he do some research with an engineer to find an alternative to asphalt and/or change the design of the driveway through the proper process.

Mr. Kelley stated that replacing the asphalt is a cost issue. Mr. Maitland suggested that Mr. Kelley talk to the seller, an attorney and the title insurance company regarding the lack of deed reference to the restrictions.

Mr. Kelley agreed to come back before the Commission by September 5, 2007 to report on the options for remediation.

7:45 Continuation – NOI - 149 Central Street – Infant Toddlers Children Center (010, 011)

Mark Donohoe from Acton Survey & Engineering presented amended plan dated 6/29/2007 and supplemental letter dated 7/10/2007. Amendments include a drip line recharge trench around the proposed addition and the addition of a flash board around the edge of the existing play area.

Discussion.

7:55 Mr. Maitland closed the hearing.

Decision - 149 Central Street

Mr. Froberg moved that the Commission issue a standard Order of Conditions for the amended plan as presented. Ms. Portante 2<sup>nd</sup>; unanimous.

7:56 Request for Determination - 124 High Street – Richard Rippere (020, 021)

Dick Dolan from ABC Cesspool presented plans for the replacement of a failed sewage disposal system. The proposed leach field is located outside the 100' buffer zone; the pump chamber and tank will be 65.3 feet from the edge of wetlands. The Board of Health has approved the design with a waiver.

Upon query by Mr. Maitland, Mr. Dolan reported that the existing leach field will be left in place under the driveway and the existing tank will be removed.

Upon query by Mr. Froberg, Mr. Dolan stated that the location of the silt fence can be moved but Mr. Tidman was comfortable with the plan as shown.

8:10 Hearing no further comments or questions, Mr. Maitland closed the meeting.

Determination - 124 High Street

Ms. Adachi moved that the Commission find the plan as proposed to be within its jurisdiction but will not impact the wetland (negative 3) under the Act with the following special conditions:

- 1) All excavated materials shall be stockpiled outside the 100' wetland buffer zone.
- 2) Silt fence shall be installed as indicated on the plan entitled "Proposed Septic System – 124 High Street, Acton MA 01720, dated May 10, 2007" signed & stamped by Steven Calichman RS No. 641 on June 5, 2007.

Ms. Serafini 2<sup>nd</sup>; unanimous.

8:12 Request for Determination - 38 Washington Drive - Shui Xu (030, 031)

Di McQueen from AJP Contractors, presented plans for the replacement of a failed sewage disposal system. She noted that the existing house is on a slab foundation with high groundwater. The proposed Cultech system will allow for a 25 to 30% reduction in size from the previous system. The existing leaching field will be excavated and removed from site with the new leach field placed in the same location 69' from the edge of wetlands. A new 1,500-gallon, double-compartment septic tank with a pump chamber will be installed adjacent to the

existing 1,000-gallon septic tank that is to remain in operation. The existing septic tank is 47' from the edge of wetlands.

Upon query by Mr. Froberg, Ms. McQueen stated that the new second tank is being added to increase the storage capacity in case of a long-term power failure. The existing system is 50 years old and in groundwater; the proposed leaching field will be smaller with high quality sand.

8:20 Hearing no further comments or questions, Mr. Maitland closed the meeting.

Determination – 38 Washington Drive

Ms. Adachi moved that the Commission find the plan as proposed to be within its jurisdiction but will not impact the wetland (negative 3) under the Act; Ms. Serafini 2<sup>nd</sup>; unanimous.

8:22 Notice of Intent - 154 Prospect Street – Aaron Jeanson (040, 041)

Mark Donohoe of Acton Survey & Engineering presented proposed plans for the demolition of an existing home and the construction of a new single family home. The proposed design provides a drip- line recharge trench along the western length (rear) of the house and driveway. The proposed house will be connected to the town sewer system. Two large stressed pines will be removed. Proposed grading will be no closer than 50' from the edge of wetlands and the back portion of the lot will remain undisturbed.

Upon query by Mr. Maitland, Mr. Donohoe reported that the edge of wetlands was confirmed by soil samples taken with a hand auger by Seth Donohoe. Grade changes will occur within the 50' and 75' setbacks; the proposed boulder wall will not be constructed across the full width of the lot due to the slopes and existing lawn.

Upon query by Ms. Adachi, Mr. Donohoe reported that the existing lawn does not grow up to the edge of wetlands; the proposed deck will be on footings and will meet the 75' setback. The drip line recharge trench will also be installed under the proposed deck.

Upon query by abutter Tom Campbell, Mr. Donohoe reported that the driveway cut will be retained by a slope without the construction of a retaining wall at the end.

Upon query by abutter Sean Towey, Mr. Donohoe reported that the new driveway will be in the same location and elevation as the existing one. The existing hedge row will not be altered and there will be no need to make changes to the existing sidewalk elevation. The front lawn and landscaping are outside of the 100' buffer zone; one big tree in the front yard will be removed.

Upon query by Mr. Froberg, Mr. Donohoe stated that there will be a 6" to 12" change in grade to smooth out a small area of the back yard and evenly disperse runoff.

8:32 Hearing no further comments or questions, Mr. Maitland closed hearing.

Decision – 154 Prospect Street

Mr. Froberg moved that the Commission issue an Order of Conditions for the plans as presented. Ms. Adachi 2<sup>nd</sup>; unanimous.

8:34 Continuation – NOI – Spring Hill Road (050, 051, 052, 053, 054, 055)

Mark Donohoe from Acton Survey & Engineering presented an amended plan dated 6/26/2007; in response to previous meetings and questions. Mr. Donohoe also noted supplemental letters submitted to the Commission dated 6/26/2007, 7/13/2007, 7/17/2007 and another letter from Caron Environmental Consulting dated 7/16/2007. Both streams on the property are currently dry. Mr. Donohoe feels that the proposed design conforms to the Bylaw with the exception of the driveway access and conforms to the required performance standards.

Upon query by Mr. Froberg, Mr. Donohoe reported that the plan includes one-foot-wide drip line recharge trenches around the perimeter of the two proposed houses. The house and garage foundations will be on crushed stone providing total recharge under them that will serve a 10-year storm event but may not handle a 100-year storm event; the trenches will meet the 75' setback under the Bylaw. Recharge basins will also be provided along the driveway between both lots and at the end of the driveway on Lot 3.

Upon query by Mr. Maitland, Mr. Donohoe stated that the project is similar to the one presented in 1999.

Mr. Maitland stated that the project was denied for many reasons in addition to the presence of species of concern as listed with Natural Heritage & Endangered Species Program (NHESP).

Mr. Donohoe stated that the 1999 filing was under the previous Bylaw, the new Bylaw has no "hardship" requirement; the major reasons for denial in 1999 were the existing access and species of concern. There currently are no listed endangered or species of special concern present on the property. The area of the suspected vernal pool has leaf stains showing flow to the fire pond.

Mr. Tidman stated that the area of the suspected vernal pool has standing water for a period of time and disagrees with the Applicant that it is not a vernal pool since water currently stands without a flowing inlet or outlet. Mr. Donohoe stated that any alterations to the site are beyond 100' from this area; breeding vernal pool species cannot be identified during this time of year. Mr. Tidman disagreed that an investigation could not be conducted.

Upon query by Mr. Maitland, Mr. Donohoe stated that the property is a 5.19 acre parcel currently known as Lot 2B as approved by the Planning Department and still owned by the Angells. The 5.19 parcel is to be subdivided into two proposed lots (2C & 3).

Upon query by Mr. Maitland, Mr. Donohoe stated that the proposed plan currently before the Commission is essentially the same plan with the same proposed wetland crossing as proposed in 1999.

Upon query by Mr. Maitland, Mr. Donohoe stated that the Angells retained an access easement in connection with the subdivision and sale of 8 Spring Hill Road. To access the undeveloped property via a shared driveway originating from the existing driveway for 8 Spring Hill Road would require that the driveway meet "common driveway" standards necessitating additional alterations but Mr. Donohoe stated that he believes that creating a common driveway is possible.

Upon query by Mr. Maitland, Mr. Donohoe agreed that there is an existing stone cart path through the wetlands on the property that has a wooden bridge crossing. If the driveway were to follow this route it would require additional alterations within the wetland and buffer zone.

Mr. Maitland asked if there was any reason the driveway could not come around the back of 8 Spring Hill Road. Mr. Donohoe stated that access to the proposed lots around the back of 8 Spring Hill Road was precluded by the sale of the property and would have a greater impact on the wetland. The wetland crossing would be wider and create a greater disturbance; it is more desirable to cross a wetland at a steep narrow point.

Mr. Maitland noted that the proposed plan presented in 1999 plan shows the wetland crossing at rear of the property around the back of 8 Spring Hill Road. Mr. Donohoe stated that this was one alternative proposed at that time.

Upon query by Mr. Froberg, Mr. Donohoe stated that the current proposed wetland crossing is designed with a boulder and pre-cast concrete deck.

Mr. Maitland noted that Lot 2C is approximately 128,000 sf and asked how much upland is outside of the 100' wetland buffer zone. Mr. Donohoe stated that this is answered in one of his letters submitted to the Commission; the zoning requires a minimum 80,000 sf lot size.

Upon query by Mr. Maitland and Ms. Adachi, Mr. Donohoe agreed that only .31 acres (6%) of the total 2.62 acres of upland area is outside of the 100' buffer zone.

Mr. Donohoe stated that the proposed project meets the setbacks under the Bylaw with the exception of the driveway; the impact, interests and purpose are all met. Developed areas are proposed to be as gentle to the environment as possible.

Upon query by Mr. Maitland, Mr. Donohoe stated that the proposed driveway will cross approximately 50' of wetlands with approximately 400' within the 100' buffer zone.

Mr. Maitland noted that constructing the proposed driveway will require major clearing of vegetation within the buffer zone. Mr. Donohoe stated that 350' of clearing the width of the proposed driveway is significant to the Act and Bylaw.

Upon query by Ms. Adachi, Mr. Donohoe stated that the proposed driveway will have three-foot wide shoulders for safety reasons.

Mr. Tidman stated that he remembers the 1999 filing utilizing the remnant stone-filled wooden bridge wetland crossing along an old "cart path"; this path was also the way the parcel was accessed for the site walks in 1999. Mr. Donohoe stated that he did not recall the term "cart path" being used in 1999.

Mr. Maitland asked if there were other changes to the site absent of delisting of wildlife species. Mr. Donohoe stated that "hardship" is addressed under the Act but not the Bylaw.

Mr. Maitland commented that the project proposes crossing a pristine area.

Attorney Luke Legere of the McGregor & Associates law firm submitted a letter on behalf of the abutters dated 7/18/07. Mr. Legere stated that the impact of the precedent that the Conservation Commission would be setting if the project were approved for the proposed construction of two large homes shoe-horned into such a small portion of uplands would be great. Mr. Legere stated that the abutters believe that the Commission made the proper decision in 1999 and that decision should be followed today. It is in the Commission's discretion to decide if a project is indeed a "limited project". If the Commission continues to consider the NOI application Mr. Legere urged a peer review of the plans. The issues of a potential vernal pool, wetland replication standards and the whether the stream on the property is intermittent or perennial have not fully been addressed; further, there will be no "taking" if the Commission denies the project. Mr. Legere stated that the decision for denial issued by the Commission in 1999 could, except for the decision date and the species language, be reissued.

Abutter Jack Appelmans reviewed a 13 page letter dated 7/17/2007 submitted by abutters and neighbors of the subject property.

Terry O'Sullivan from 8 Spring Hill Road stated that he has 20 years of experience in the construction industry. It is his opinion that the proposed construction will have an impact on the resource areas, from the sinking of the water wells to the construction process itself. The proposed clearing will remove natural means of absorption that currently exist. He expressed concern that the weight of load-bearing trucks during the construction process will affect the banks of the fire pond due to the proposed driveway's close proximity to the pond. He feels that the construction of the proposed retaining wall adjacent to the existing stone wall will impact the adjacent property. Mr. O'Sullivan also stated that he feels that the current plan does not fully represent the complete impact of the proposal and the amount of imported fill that will be needed.

William Sisler from 3 Duston Lane expressed concern regarding the potential impact to his septic system and drainage from the proposed lots onto his property as he is closest and will be the most affected.

Jill Callahan from 7 Spring Hill Road expressed concern about the hydrologic impacts of the proposed project. She noted that the stream from the fire pond flows through her property to the town owned conservation land. She reported that she has seen this stream grow to approximately 25' wide in the spring during the snow melt; this is not a "little" stream. She reported that her basement fills with four feet of water during these events.

Dara Mitchell from 8 Spring Hill Road expressed concern regarding the current backflow restrictions during high water flow at the culvert in Spring Hill Road.

Sandra Roschelle from 2 Spring Hill Road noted that the property in question looks like a dense forest where hundreds of existing trees will be removed. She feels that the proposed construction will create greater problems with flooding in the area and will have a long-term effect on the local climate and water absorption. Ms. Roschelle asked that the Commission request more proof and clarification from the Applicant.

Bill Sawyer from 15 Spring Hill Road reviewed previously stated concerns noting that the previous test pits from 1999 cannot be located by the Applicant's engineer which ultimately may mean that the septic plans will be different than currently proposed. Spring Hill Road floods during major storm events so that it is not passable. Development tends to increase the tendency of flooding. Mr. Sawyer does not feel that Applicant has shown the slightest benefit to the public interest from the granting of a permit for the proposal as a limited project.

Cynthia Harvey from 7 Duston Lane stated that this property is a special wildlife habitat; the proposed clearing, including all of the upland, will change the environment permanently. The remaining trees will be vulnerable without the current surrounding tree community. She noted based on the 1999 denial that the Commission should require a more careful study of the entire property with any future proposal.

Stewart Harvey from 7 Duston Lane reported that his property encompasses a large swamp to which eight areas drain. The old farm trench from the fire pond allows drainage to escape from his swamp where a vast amount of water collects on his property.

Upon query by Mr. Maitland, Mr. Tidman stated that he does not feel that a third-party consultant review would change the record but does not feel that all concerns have been adequately addressed.

Mr. Froberg suggested that the Commission hire a consultant to help determine if the filing does meet the intent and standards of the Act and Bylaw. He stated that he is not prepared to assess the new information submitted on this date and prefers to hire a third-party consultant.

Mr. Maitland noted that the Applicant is required to meet the performance standards as required under the Act and Bylaw. The Commission has received a large amount of additional information and while not all questions were answered that information is in the record and sufficient for the Commission to vote.

Upon query by Mr. Maitland, Mr. Donohoe stated that the Applicant wishes to close the hearing without further continuance.

10:02 Hearing no further comments or questions Mr. Maitland closed the hearing at the Applicant's request.

DECISION – Spring Hill Road – The Commission tabled the decision until Monday, July 23, 2007 at 8:00 AM.

Discussion – 70 Newtown Road

Certificates of Compliance

Mr. Tidman reported that both 132 Prospect Street and Powdermill Plaza are ready for certificates.

- (060) 132 Prospect Street - 85-932 – pool construction, no conditions in perpetuity. Ms. Adachi moved that the Commission issue a Certificate as recommended by Mr. Tidman. Ms. Serafini 2<sup>nd</sup>; unanimous.
- (061) Powdermill Plaza – 85-925 - sewer connection, no conditions in perpetuity. Ms. Portante moved that the Commission issue a Certificate as recommended by Mr. Tidman. Ms. Serafini 2<sup>nd</sup>; unanimous.

Preliminary Review - 8 Puritan Road – Discussion

The Commission advised Mr. Tidman to inform the builder and owner to meet the setbacks of “like structure” as outlined in the Bylaw.

11:00 Meeting adjourned.

  
Terrence Maitland, Chair

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